

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**WYNN LAS VEGAS, LLC,**

**and**

**Case No. 28-CA-193230**

**MARGARET MALI, an Individual**

**and**

**Case No. 28-CA-193237**

**JEANNE CORRELL, an Individual**

**and**

**Case No. 28-CA-205508**

**BEATRIZ LOPEZ, an Individual**

---

**WYNN’S REPLY IN SUPPORT OF ITS MOTION TO DISMISS, OR IN THE  
ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

Respondent Wynn Las Vegas, LLC (hereinafter “Wynn” or “Respondent”), by and through its counsel of record, the law firm of Kamer Zucker Abbott, hereby submits its Reply in Support of its Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (“Reply Motion”) pertaining to the allegations contained in the Complaint issued by the Regional Director on November 16, 2017. While the Board has withdrawn several allegations in its Amended Complaint, in view of the Board’s recent decision in The Boeing Co., 365 NLRB No. 154 (Dec. 14, 2017), Region 28 is still improperly prosecuting innocuous Wynn policies, including Wynn’s Social Media Policy and Wynn’s Personal Appearance Policy. As to the remaining allegations pertaining to Ms. Margaret Mali and Ms. Jeanne Correll, the allegations in the Complaint do not establish any protected, concerted activity. As a result, Wynn requests that the Complaint be dismissed in its entirety or that summary judgment be entered in Wynn’s favor.

## II. LEGAL STANDARDS.

### A. *Motion to Dismiss Standard.*

The Board has adopted a system of notice pleading for its complaints. Quanta, 355 NLRB No. 217, slip op. at 2 (2010). This system is governed by §102.15 of the Board's Rules and Regulations, which requires that Complaints contain "(a) a clear and concise statement of the facts upon which assertion of jurisdiction by the Board is predicated and (b) a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed."

A Complaint cannot be dismissed for failure to state a claim upon which relief can be granted when the allegations of the Complaint, if true, set forth a violation of the Act. Children's Receiving Home of Sacramento, 248 NLRB 308, 308 (1980). In considering a Motion to Dismiss, "the Board construes the Complaint in the light most favorable to the General Counsel, accepts all factual allegations as true and determines whether General Counsel can prove any set of facts in support of his claims that would entitle him to relief." Detroit Newspapers, 330 NLRB 524, 524, n. 1 (2000). Further, in the case where alleged violations are dependent on the legality of an agreement or other written documents, the violations may be dismissed for failure to state a claim if such an agreement or written document is not unlawful. See Arise Virtual Solutions, Inc. and Matthew Rice, 2015 WL 6593085 (N.L.R.B.) (Miscimarra, dissenting) ("Because the General Counsel has only alleged violations that are dependent on the unlawfulness of such an agreement, I would find that the General Counsel *failed to state a claim upon which relief may be granted*, and grant the Respondent's Motion to Dismiss for Failure to State a Claim.") [Emphasis added].

***B. Motion for Summary Judgment Standard.***

The Board will grant motions for summary judgment if there is “no genuine issue as to any material fact” and “the moving party is entitled to judgment as a matter of law.” Security Walls, LLC, 361 NLRB No. 29, slip op. at 1 (2014) (quoting Conoco Chemicals Co., 275 NLRB 39, 40 (1985)). Further, section 10(b) of the Act provides that Board hearings “shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States.” And the Board's summary judgment standard, recited above, is identical to the summary judgment standard applicable under the Federal rules. See Fed. R. Civ. P. 56(a) (“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law”). Under the Board’s Rules, however, a party opposing summary judgment has a *somewhat* lesser burden than under the Federal rules. Section 102.24(b) of the Board's Rules states in relevant part:

All motions for summary judgment or dismissal shall be filed with the Board.... Upon receipt of a motion for... summary judgment... the Board may deny the motion or issue a notice to show cause why the motion should not be granted. If a notice to show cause is issued, the hearing, if scheduled, will normally be postponed indefinitely. If a party desires to file an opposition to the motion prior to issuance of the notice to show cause to prevent postponement of the hearing, it may do so.... If a notice to show cause is issued, an opposing party may file a response thereto notwithstanding any opposition it may have filed prior to issuance of the notice... It is not required that either the opposition or the response be supported by affidavits or other documentary evidence showing that there is a genuine issue for hearing. The Board in its discretion may deny the motion where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings, opposition and/or response indicate on their face that a genuine issue may exist. If the opposing party files no opposition or response, the Board

may treat the motion as conceded, and... summary judgment... if appropriate, shall be entered. Rules and Regulations § 102.24.

### **III. LEGAL ARGUMENT.**

#### ***A. The Complaint Allegations Pertaining to Wynn's Policies Must Be Dismissed.***

Importantly, it should be noted that the policies cited by the General Counsel are contained in Wynn's Tenth Anniversary Edition Magazine ("Magazine") published in 2015 posted on Wynn's intranet, the WIRE. The Magazine does not contain updated employment policies in their entirety. In fact, the Magazine includes a legal disclaimer explicitly stating, "This handbook is designed to provide employees with *general* policy statements." [*Emphasis added*] **Exhibit 1**, Excerpt from Magazine. Rather, Wynn maintains all complete employment policies on the WIRE, which are updated periodically, requiring all employees to acknowledge receipt of the new policy. Further, the Magazine states that it is not intended to infringe on any employee rights granted by law stating, "To the extent a labor agreement or obligation under the National Labor Relations Act is inconsistent with this guidebook, the labor agreement or the National Labor Relations Act obligation shall control." It should also be noted that this Magazine is clearly outdated as evidenced by not only the outdated policies, but also advertisements for Wynn restaurants that are no longer in business such as Botero and The Country Club and Wynn shows that have been closed for years, such as Showstoppers.

While this magazine is still accessible to employees on the WIRE for historical purposes, these are not the current policies contained in Wynn's electronic employee handbook. Rather, Wynn's current Personal Presentation Policy does not contain the policy language included in the Complaint forbidding employees from wearing any non-Company distributed buttons. **Exhibit 2**, Wynn's Personal Presentation Policy. Additionally, Wynn's current Social Media Policy does not include the language cited in the Complaint and further contains a disclaimer

stating, “These limitations are not intended to infringe upon any rights employees may have under local, state and federal employment and labor laws.” **Exhibit 3**, Wynn’s Social Media Policy. As the policies included in the Complaint are no longer in effect and have not been in effect for several years, the Complaint allegations pertaining to these policies should be dismissed.

If the Administrative Law Judge does not dismiss the policy allegations based on the fact that the complained of policy language is not currently in effect, the General Counsel is still improperly prosecuting these policies under the holding in The Boeing Co. Specifically, the General Counsel is evaluating policies out of context. The Boeing Co., 365 NLRB No. (“Under the standard we adopt today, when evaluating a facially neutral policy, rule or handbook provision that, when reasonably interpreted, would potentially interfere with the exercise of NLRA rights, the Board will evaluate two things: (i) the nature and extent of the potential impact on NLRA rights, *and* (ii) legitimate justifications associated with the rule.) These rules must be read in their full context in order to be “reasonably interpreted.” *Id.*

Responding to the Personal Appearance Policy allegations, the Complaint refers to one sentence out of a four (4) page long policy. **Exhibit 4**, Personal Appearance Policy from Magazine. Other requirements under the policy further emphasize the importance of a well-groomed staff, free of any conspicuous jewelry or accessories. For example, the policy also requires that employees refrain from extreme hair styles, nail polish colors, and makeup. *Id.* at pages 1-2. The policy also requires that no conspicuous body piercings or tattoos are permitted. *Id.* at 2. Accessories are also limited under the policy in that employees are only permitted to wear one ring on each hand, women are allowed no more than two earrings per ear, and no decorations are allowed on any name badges unless specifically authorized. *Id.* at 4. The Personal Appearance Policy read as a whole shows that the policy is intended to control *all* jewelry and accessory use to maintain a professional atmosphere. Thus, the portion referring to

company distributed buttons only furthers Wynn's goals of professional appearance and is not to dissuade employees from engaging in any activity that is protected by the Act.

The Social Media policy is also taken out of context. The Board only includes the introductory paragraph of the Policy. However, the Social Media Policy continues with several specific examples of what the Policy intends to forbid. Specifically, Wynn asks that employees not post information that purports to represent the position, viewpoint, statements, opinions, or conclusions of the Company. It also requires that employees refrain from threats of violence, posting the Company's copyrighted material, trade secrets, and confidential information, or photographs owned by the Company. **Exhibit 5**, Social Media Policy from Magazine. Importantly, the examples elaborate on the opening paragraph referenced by General Counsel by explaining that the policy forbids employees from, "Engaging in libelous, defamatory, obscene, violent, or maliciously false communications against our Company, guests, employees, or business partners." Id. The policy read to completion makes clear that it is only intended to forbid employees from engaging in the unlawful behavior listed above, not from engaging in protected activity.

General Counsel argues that a hearing is needed to consider where to strike the appropriate balance between employees' rights under the Act and Wynn's concerns for its business interest citing Sheraton Anchorage, 362 NLRB No. 123. However, Wynn argues that such a hearing will be unnecessary and a waste of the Board's resources in light of The Boeing Co. case precedent. Further, as discussed *infra*, Wynn has a legitimate business interest in maintaining these policies.

With regard to the Personal Appearance Policy, the Board with Court approval has long held the wearing of union buttons or insignia activity protected under Section 7 of the Act absent "special considerations." Republic Aviation Corp. v. NLRB, 324 U.S. 793 (1945). The Court in Republic Aviation, characterized the analysis involved in such cases as one of working out an

adjustment between the undisputed right of self-organization assured to employees under the Wagner Act and the equally undisputed right of employers to maintain discipline in their establishments. Id. at 324 U.S. at 798-799.

The Board and courts have also considered the argument that certain employers have a business interest in preserving their employees' uniformity of appearance when they are dealing with the public. Such interests may be a factor supporting the limitation of union insignia. Nordstrom, Inc., 264 NLRB 698, 700 (1982). In evaluating such arguments, the Board considers whether the employer has in fact strictly limited the wearing of similar adornments. Albertsons, Inc., 300 NLRB 1013 (1990).

Indeed, in Harrah's Club, 143 NLRB 1356 (1963), the Board found the employer violated Section 8(a)(1) of the Act by prohibiting the wearing of small neat and inconspicuous union buttons on the uniforms of waiters in a world class theater-restaurant even where the prohibition applied to all jewelry and was part of a longstanding benignly initiated, rigorously and consistently applied appearance policy. The Ninth Circuit Court of Appeals denied enforcement of the Board's order, NLRB v. Harrah's Club, 337 F.2d 177 (9th Cir. 1964), finding the wearing of a union button on the facts of that case not to be protected activity. The court further held that, even assuming the employees' actions were protected, the Board had failed to balance those employee activities against the employer's right to maintain discipline. In this regard Judge Hamlin writing for the Court held:

Most business establishments, particularly those which, like respondent, furnish services rather than (sic) goods, try to project a certain type of image to the public. One of the most essential elements in that image is the appearance of its uniformed employees who furnish that service in person to customers. The evidence shows that respondent has paid close attention to its public image by a uniform policy of long standing against the wearing of jewelry of any kind on the uniform. ... This is a valid exercise of business judgment, and it is not the province of the Board or of this court to substitute its judgment for that of management so long as the exercise is reasonable and does not interfere with a protected purpose. Id. at 180.

Further, in United Parcel Service, the Board specifically noted the judge's finding that Respondent had a “history of presenting to the customers and the general public its image of a neatly uniformed driver and the fact that this is an important part of Respondent's public image.” United Parcel Service, 195 NLRB 441 (1972), n. 2 at 441.

The “particular facts” in this case, weigh heavily in favor of Respondent. Republic Aviation Corp. v. NLRB, 324 U.S. at 798-799. Wynn is a Five Star Forbes rated establishment known for its impeccable presentation, quality, and customer service. Part of Wynn’s high quality and presentation standards includes the necessity that all employees appear presentable, in uniforms, and free of any noticeable jewelry, nail colors, tattoos, piercings, buttons, or any other conspicuous accessory. As in Harrah’s Club, *supra*, Wynn is in the business of selling services rather than goods and has a public image to maintain. It also maintains a strict appearance policy that supports Wynn’s emphasis on the importance of the uniformity of employees and the prohibition of *all* conspicuous jewelry and paraphernalia. As in Harrah’s Club, “it is not in the province of the Board... to substitute its judgment for that of management.” Id. 337 F.3d at 177.

***B. Ms. Mali and Ms. Correll Allegations Fail to Allege Protected, Concerted Activity and Must be Dismissed.***

On its face, the Complaint fails to state any facts for which relief can be granted. Specifically, the facts described in 4(d) through 4(k), even if accepted as true, do not establish that Ms. Mali and Ms. Correll engaged in protected activity. It is true that the two employees accepted red envelopes from a co-worker in celebration of the Chinese New Year, but does not explain how such conduct is protected, concerted activity nor is there any explanation of how the conduct by Ms. Mali and Ms. Correll was for the purpose of mutual aide and protection of co-workers. See Complaint at 4(d). Further, the Complaint does not allege that Ms. Mali and Ms. Correll complaint to management about the tip policy, spoke to other employees about the



policy, or even spoke to each other about accepting the red envelopes prior to doing so. Also noticeably absent is any allegation that Wynn's tip policy was unlawful. In the absence of an unlawful policy and protected activity, these Complaint allegations should be dismissed.

***C. There Are No Material Facts in Dispute – This is a Question of Law Whether Ms. Mali and Ms. Correll's Acts Were Protected.***

Moreover, there are no material facts genuinely in dispute. As discussed *supra*, Ms. Mali and Mr. Correll were repeatedly warned to not accept any red envelopes, but did so anyway in violation of company policy. The Complaint does not dispute that they accepted the envelopes and cannot dispute that they were instructed to not accept the envelopes during multiple pre-shifts. In fact, both Ms. Mali and Ms. Correll's admitted actions indicate that they knew not to accept the red envelopes as they lied about it to their supervisor and later, after becoming fearful that they would be caught, admitted to their policy violations. In relation to these disciplines, the Board challenges Wynn's progressive discipline policy as it pertains to "willful misconduct." However, discipline action for willful misconduct is an agreed upon reason for discipline under the negotiated collective bargaining agreement with the Union. Further, Ms. Mali and Ms. Correll were terminated for their dishonesty when they lied to Ms. Bertalot about receiving envelopes. As mentioned in Wynn's Motion to Dismiss, Or In the Alternative, Motion for Summary Judgment ("Motion"), Wynn did not disparately or discriminatorily apply its Progressive Discipline Policy to Ms. Mali and Ms. Correll. Rather several other employees have been discharged under similar facts as indicated in Exhibit 12 to the Wynn's Motion.

The sole question for the Administrative Law Judge to determine is whether accepting red envelopes containing money after being repeatedly instructed not to do so would qualify as protected, concerted activity. Notably, the General Counsel does not challenge Wynn's policy regarding tips or gifts. Rather, the General Counsel is challenging Wynn's Progressive Discipline policy, which mirrors the negotiated language contained in the collective bargaining

agreement. These women were not working together to address work issues or unlawful policies when they accepted the red envelopes. Rather, Ms. Mali and Ms. Correll accepted red envelopes for their own personal reasons – to receive tips. Neither employee challenged or questioned the tip policy prior to accepting the envelopes. There is also no evidence of any discussion between Ms. Mali, Ms. Correll or any other employees prior to their violative acts. Indeed, as set forth by the Board in Meyers Industries, 268 N.L.R.B. 493, 497 (1984) (Meyers I):

In general, to find an employee's activity to be "concerted", we shall require that it be engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself.

And as recited in Meyers Industries, 281 N.L.R.B. 882, 887 (1986) (Meyers II):

We reiterate, our definition of concerted activity in Meyers I encompasses those circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management.

Ms. Mali and Ms. Correll's actions were engaged in solely for their own benefit, not to initiate or induce group action, and thus cannot be protected, concerted activity. Further, even if the two employees conspired to accept the red envelopes, two employees conspiring to violate a lawful policy does not fall within the gambit of protected activity just as two employees colluding to commit a crime such as theft would not fall under protection of the Act. Thus, Wynn's decision to terminate Ms. Mali and Ms. Correll was not in violation of the Act, but because Ms. Mali and Ms. Correll lied about both possessing envelopes and their reasons for lying about the possession after they were repeatedly briefed on the proper procedure for handling red envelopes. Therefore, Ms. Mali and Ms. Correll did not engage in any activity protected by the Act and thus this case is ripe for summary judgment.

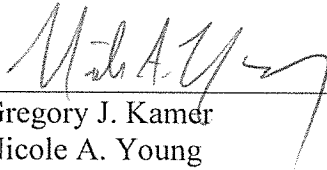
**VI. CONCLUSION.**

Accordingly, and for the foregoing reasons, Wynn respectfully requests that the Complaint be dismissed in its entirety, or in the alternative, that summary judgment be granted in favor of Wynn on all claims.

DATED this 2<sup>nd</sup> day of February, 2018.

KAMER ZUCKER ABBOTT

By:

  
\_\_\_\_\_  
Gregory J. Kamer  
Nicole A. Young  
Kaitlin H. Ziegler  
3000 West Charleston Boulevard, Suite 3  
Las Vegas, Nevada 89102  
Tel: (702) 259-8640  
Fax: (702) 259-8646  
Attorneys for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2018, I did serve a copy of Wynn's Reply in  
**Support of its Motion to Dismiss, Or in the Alternative, Motion for Summary Judgment**  
upon:

National Labor Relations Board  
1015 Half Street SE  
Washington, D.C. 20570-0001

**VIA ELECTRONIC FILING**

Cornele A. Overstreet, Regional Director  
National Labor Relations Board, Region 28  
Resident Office  
600 South Las Vegas Boulevard, #400  
Las Vegas, Nevada 89101-6637

**VIA CERTIFIED MAIL WITH  
RETURN RECEIPT**

Wynn Las Vegas, LLC  
3131 Las Vegas Boulevard South  
Las Vegas, Nevada 89109-1967

**VIA CERTIFIED MAIL WITH  
RETURN RECEIPT**

Margaret Mali  
707 Peregrine Falcon Street  
Henderson, Nevada 89015-8526

**VIA CERTIFIED MAIL WITH  
RETURN RECEIPT**

Jeanne Correll  
8710 Russet Hills Court  
Las Vegas, Nevada 89147-8669

**VIA CERTIFIED MAIL WITH  
RETURN RECEIPT**

Beatriz Lopez  
2261 Sandy Lane  
Las Vegas, Nevada 89115-5231

**VIA CERTIFIED MAIL WITH  
RETURN RECEIPT**

By:

  
An employee of Kamer Zucker Abbott

## **INDEX OF EXHIBITS**

<b><u>EXHIBIT</u></b>	<b><u>DESCRIPTION</u></b>
1	Magazine Excerpt
2	Wynn's Personal Presentation Policy
3	Wynn's Social Media Policy
4	Personal Appearance Policy from Magazine
5	Social Media Policy from Magazine

# EXHIBIT 1

# EXHIBIT 1

# WE save

WYNN EMPLOYEE discount program

WITH YOUR WYNN | ENCORE  
ID BADGE, THE SAVINGS ARE ENDLESS!

# WE

WYNN EMPLOYEES

director  
manager  
editor/writer  
writer

DIANE MCKINNEY  
DANIELLE AGUIAR  
AMANDA RICHARDSON  
SUSAN TOTH

creative supervisor

NICOLE MEHRMAN

design support

BRIAN NIELSON  
ADRIANA ECHEVERRIA

## legal

This guidebook is not, and should not be taken as, an express or implied contract of employment. Except in the case of an express contract applicable to you, you have the right to terminate your employment for any reason, with or without cause, and Wynn | Encore reserves the right to do the same. This handbook is designed to provide employees with general policy statements and is not intended to provide any guarantee whatsoever regarding the duration of your employment or procedures our Company may utilize during your employment.

No one other than the President of Wynn | Encore, in writing, has the right to bind our Company to any agreement with you that is contrary to this guidebook or which deals with matters not covered herein.

To the extent a labor agreement or obligation under the National Labor Relations Act is inconsistent with this guidebook, the labor agreement or the National Labor Relations Act obligation shall control.

Information can change without notice. Employees are responsible for knowing all current rules, regulations, policies, and procedures. Employees must visit the WIRE to view the policies in their entirety, including any changes or updates.

See the WIRE for a full list of

## **EXHIBIT 2**

## **EXHIBIT 2**





---

## PERSONAL PRESENTATION

### Making a good first impression

Wynn<sup>1</sup> believes first impressions count. The care an employee takes with personal presentation reflects their professionalism. Wynn maintains personal presentation standards in order to make a consistently good first impression on our guests.

### PROCEDURE

1. Department managers review the following aspects of the employees' personal presentation before the start of each shift:
  - General overall grooming
  - Complete uniform and uniform condition or professional attire
  - Name badge and name badge condition
2. Employees must maintain a high standard of grooming and personal hygiene and follow the personal presentation guidelines below:
  - Hair
    - ◆ Hair must be neat, clean, and appropriately styled at all times.
    - ◆ Extreme hairstyles and/or colors are not permitted.
    - ◆ Wigs are permitted provided they meet the Personal Presentation Standards.
    - ◆ Hair accessories, types, and styles should be appropriate for a business environment and must conform to the specific requirements of each department.
    - ◆ Hair should not cover or fall into the employee's face while performing their job duties.
    - ◆ Men's hair must not be worn in a style that falls below the ears or over the collar.
    - ◆ Partially shaved heads or shaved designs are not permitted.
    - ◆ Beards and goatees, if permitted, must be well-groomed, closely cropped near the face and grown while you are off work (e.g. on your vacation).

---

<sup>1</sup> As used herein, the use of the term "Wynn" refers to Wynn Resorts, Limited, Wynn Las Vegas, LLC (which includes Wynn Las Vegas and Encore at Wynn Las Vegas), Wynn MA, LLC, Wynn Design and Development, LLC, and their affiliated companies with operations based in the United States. This Policy applies to all employees of Wynn, unless otherwise prohibited by the applicable laws of the jurisdiction in which the company is operating.

---

## PERSONAL PRESENTATION

- ◆ Mustaches must not extend past the upper lip and grown while you are off work (e.g. on your vacation).
- ◆ Sideburns may not extend below the middle of the earlobe and must be neatly trimmed.
- Grooming and Makeup
  - ◆ *Fingernails* – fingernails must be clean, neatly manicured, and moderate in length – extreme colors of nail polish are not permitted.
  - ◆ *Fragrances* – perfumes, colognes, and aftershave lotions should be subtle and worn in moderation.
  - ◆ *Makeup* – makeup must not be extreme.
  - ◆ *Body Piercing* – visible body piercing, with the exception of ears, is not permitted (gauge piercing is never permitted).
  - ◆ *Tattoos* – unless otherwise permitted by the department and approved by the Vice President of Human Resources, visible tattoos, either permanent or temporary, are not permitted and must be covered by a patch, sleeve, makeup or bandage that suits the skin tone and approved by the department.
  - ◆ *General grooming* – daily use of toothpaste, mouthwash, and deodorant is required. Use of mints after meals or and/or smoking is recommended.
  - ◆ *Presentation* – Men must keep their hands out of their pockets when walking in a public area.
- Dress
  - ◆ *Uniformed employees* must wear assigned uniforms
    - ▶ Uniforms must be clean, neat, well-pressed, well-maintained, and worn as designed (e.g., long sleeves may not be pushed up, etc.).
    - ▶ Uniforms should always fit properly – ill-fitting uniforms, or uniforms that are in need of repairs, must be brought to the immediate attention of the Uniform Operations department.
    - ▶ Alterations must be done through the Uniform Operations department only.
    - ▶ Uniforms may not be worn off-duty when a guest of the property.
    - ▶ Appropriate undergarments, socks and/or hosiery must be worn at all times.
    - ▶ Hosiery must be free from runs and tears and must be clean and show no discoloration or stains on feet.
  - ◆ *Non-uniformed employees* must dress in good business taste

---

## PERSONAL PRESENTATION

- Clothes should be appropriate to your job and work environment.
- Men's suits should be dark colors and at least one button must be buttoned when the employee is standing or walking around.
- Preferably men's shirts should be solid white or light blue and ties should be in conservative colors and patterns. No promotional or novelty ties are allowed.
- Clothing should be neat, clean, well-pressed, well-maintained, and fit properly.
- Tank tops, bare midriffs, see-through fabrics, halter tops, and halter dresses are not permitted.
- Appropriate undergarments, sock and/or hosiery must be worn at all times. Men must wear plain socks in conservative colors. No patterned socks are permitted.
- Hosiery must be free from runs and tears and must be clean and show no discoloration or stains on feet.
- Clothing must also conform to the specific standards of each department.

### ■ Shoes

- ◆ *Shoes* - must be clean and well-polished, in good repair, and present a professional appearance.
- ◆ *Shoes* with open-toes or open-backs, including sandals, flip-flops, and sling backs are not permitted – when employees choose to wear walking shoes in from the parking areas, they must change into acceptable shoes before accessing guest areas.
- ◆ *Shoes* - must also conform to the specific standards of each department, including safety requirements.

### ■ Accessories

- ◆ *Jewelry* - must be tasteful and not excessive.
- ◆ *Pierced ears* - are permitted; women may wear no more than two (2) earrings in each lobe; men who wear earrings, when permitted, must wear one (1) in each ear.
  - Earrings - must be appropriate in size and conform to the specific requirements of each department.
- ◆ *Hats* - are not permitted, unless they are a part of a uniform.
- ◆ *Glasses* – dark glasses may not be worn while on duty inside, unless required by a physician's prescription.
- ◆ *Name badges* – must be worn appropriately at all times; no decorations are allowed on the name badge except when authorized.

---

## PERSONAL PRESENTATION

3. For violations of Personal Presentation Standards, department managers do the following:
  - Allow for medical exceptions when approved by Employee Relations.
  - Prohibit employees who are in violation from clocking in (if hourly) or starting their shift (if salaried).
  - Offer employees the opportunity to correct the violation and report to work late or prohibit employees from working their shift.
  - Inform employees that an absence from work or reporting late to work because of non-compliance with personal presentation standards is considered a violation of the attendance standards.
4. Department managers may develop and communicate department-specific personal presentation standards. However, department standards must be:
  - Consistent with the intent of general Wynn standards and specific to operational needs.
  - Written within established guidelines and format.
  - Approved by the divisional vice president and the vice president of Human Resources before the department standards are communicated to employees

## RESPONSIBILITIES

Employees are responsible for their personal presentation and for complying with Wynn and department personal presentation standards, checking their appearance throughout each shift, and maintaining uniforms properly. Employees notify the Uniform Operations department when uniforms require attention, such as additional cleaning for stain removal, tailoring, repairs, or a change in size to ensure a proper fit.

Department managers are responsible for ensuring employee compliance with personal presentation and are accountable for any violations. Accordingly, department managers are expected to clearly communicate Wynn and department personal presentation standards, to comply with the standards themselves at all times, to recognize and reward employees who do so, and to appropriately counsel employees who do not.

## **EXHIBIT 3**

## **EXHIBIT 3**



## SOCIAL MEDIA

### Use of Social Media

Wynn<sup>1</sup> recognizes the increasing popularity and usefulness of social media as a rapidly evolving means of communication. This policy provides employees with some important standards and guidelines when using social media.

#### DEFINITION

"Social media" is an umbrella term for various forms of communication consisting of user-created text, audio, images and video published in a shared online environment, such as over the Internet or through mobile telephone networks.

The differing forms of social media generally have the common characteristic of allowing for personal participation and feedback in a very fast and informal way. Social media is also typically open to vast multitudes of people to observe, copy, and use, with few, if any, access restrictions.

Examples of social media include, but are not limited to:

- Social Network Services - online communities of people who share interests and/or activities such as Facebook, MySpace, Friendster, aSmallWorld, and Bebo.
- Blogs – short for weblog - a type of website with regular entries of commentary, descriptions of events, or other materials, such as Mashable.com, The Drudge Report, TMZ.com and those created using Wordpress or Xanga.
- Micro-Blogs – brief text updates, photos or audio clips submitted in multiple ways such as text messaging, instant messaging, e-mail, digital audio or the web, such as Twitter, Tumblr and Plurk.
- Texts – mobile phone messaging services, such as SMS (Short Message Service) and MMS (Multimedia Messaging Service)
- Internet Forums/Message Boards - online discussion sites, such as Yahoo! Message Boards.
- Podcasts - digital audio or video files available for download on the Internet, commercial applications include Apple iTunes, Microsoft Zune, Juice and Winamp.
- Content Communities – audio, video and photograph-sharing sites, such as YouTube, Flickr, Twitpic, and Instagram.
- Wikis – a website that uses wiki software to allow multiple users, including website visitors, to create, modify and organize web page content in a collaborative manner, such as Wikipedia.

<sup>1</sup> As used herein, the use of the term "Wynn" refers to Wynn Resorts, Limited, Wynn Las Vegas, LLC (which includes Wynn Las Vegas and Encore at Wynn Las Vegas), Wynn Design and Development, LLC and their affiliated companies with operations based in the United States.



## SOCIAL MEDIA

### USING SOCIAL MEDIA FOR BUSINESS PURPOSES

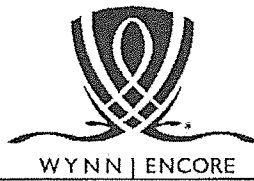
There are many potentially beneficial business uses of social media, including customer, competitor, and industry research; marketing and customer development; networking; and knowledge building.

Employees who use social media for Wynn business purposes are to always conduct themselves in a professional manner according to this policy and other applicable Wynn policies and procedures, including but not limited to Wynn's Code of Personal Conduct; Code of Business Conduct and Ethics; Zero Tolerance for Harassment and Discrimination; Computer, Internet, Intranet, and E-Mail Use; and Computer Access and Use Agreement policies. Additionally, if you are unsure as to whether or not a particular social media activity is appropriate you **must** consult with your department manager before participating.

Each employee is responsible for any on-line activity conducted using a Wynn issued e-mail address or other access method that can be traced back to Wynn's domain, computer equipment or other devices and equipment, all of which can only be used to access social media if related to a valid business purpose directly related to your specific job duties at Wynn and/or in a manner consistent with Wynn's Computer, Internet, Intranet, and E-Mail Use policy and Computer Access and Use Agreement. Employees should have no expectation of privacy while using Wynn's e-mail addresses, computer systems and other devices to access social media and Wynn will monitor and investigate the use of its equipment as necessary.

The following standards are to be followed when using social media for Wynn business purposes:

1. Do not portray yourself as an official spokesperson for Wynn or suggest you represent the Company's position unless specifically authorized to do so in writing by a representative of Wynn's Public Relations Department. If you are not an official spokesperson, be clear that any social media comments you make are your own and not on behalf of Wynn or entities doing business with Wynn.
2. Speak/write in first person voice rather than third person voice when using social media (*i.e.*, "I believe . . ." rather than "we believe . . .").
3. Disclose your true identity and affiliation with Wynn at all times when using social media. It is inappropriate to hide behind false identities, pseudonyms, or partial names when utilizing social media.
4. Adhere to all applicable Wynn policies concerning confidentiality when using social media. Most significantly, do not discuss or otherwise disclose Wynn's trade secrets, proprietary or other nonpublic business information, including private information about Wynn's customers, employees, business partners, service providers and suppliers, company financial information, nonpublic operational procedures and techniques that have a commercial value and strategic business plans.
5. Identify any copyrighted or borrowed material with citations and links. When publishing any authorized materials online through social media that include someone else's direct or paraphrased quotes, thoughts, ideas, photos or videos, always use citations and links to



## SOCIAL MEDIA

the original material where applicable. All material, regardless of its source, must be evaluated and approved for appropriateness prior to posting by a department manager.

6. Evaluate the accuracy and truthfulness of anything you write or produce before posting. Do not post any information that has not been verified and/or confirmed relative to accuracy and truthfulness.
7. Follow the terms and conditions of use established by the venue used for any social media activities (website, blog, discussion forum, etc.). You can generally find links to these terms on the home page of each site. It is your responsibility to review all such rules and to conform all of your social media activity to the applicable terms and conditions for each site. Note, in some instances the social media site in question may own any material you post on the site.
8. Do not initiate "posts" or comment on others' posts relating to the quality of any of Wynn's facilities, service, food, entertainment, etc. If you see any such review and feel action is warranted because the post is either extremely favorable or extremely unfavorable, please notify Wynn's Public Relations Department.
9. Do not post any audio, video or photographic images taken at any of Wynn's properties or affiliated properties unless specifically authorized to do so in writing by a representative of Wynn's Public Relations Department.
10. Do not join or create blogs, forums, message boards, groups on social networks, etc. related to or representing any of Wynn's properties, affiliated entities (*i.e.*, clubs, shows, restaurants, etc.), business partners, service providers or vendors or post business-related comments on such sites unless authorized to do so in writing by a representative of Wynn's Public Relations Department.
11. Always be respectful when referring to Wynn's customers, employees, business partners, service providers and vendors, including their privacy. This applies to both the type of information posted and the manner and context in which it is presented. Do not identify such individuals by name, post their pictures or provide other specific information without first securing their approval.
12. Obey the law. Do not post any information or engage in any online conduct that may violate applicable local, state or federal laws or regulations.

## PERSONAL USE OF SOCIAL MEDIA

Wynn respects the rights of employees to use social media as a medium of personal self-expression and conversation and does not want to discourage such self-expression and discussion. Indeed, Wynn does not discriminate against employees who use these mediums for personal interests or other lawful purposes.

Social media sites have nearly unlimited communication potential, duration and retention, and generally can be accessed by anyone around the world. Thus, to protect Wynn's legitimate business interests, employees who maintain or contribute to social media sites are prohibited from engaging in certain activities:





## SOCIAL MEDIA

1. Using Wynn facilities and equipment, including computers and software during working time to engage in personal social media activities in a manner that is inconsistent with Wynn's Computer, Internet, Intranet, and E-Mail Use policy and Computer Access and Use Agreement. In particular, non-supervisory/non-managerial employees are strictly prohibited from engaging in any personal social media activities during working time.
2. Posting social media content that purports to represent the position, viewpoint, statements, opinions or conclusions of "Wynn," its business partners, service providers or vendors. When necessary to be clear, indicate that your posts represent your views and not necessarily the opinions of Wynn, its business partners, service providers or vendors.
  - Managers and executives should take special note that by virtue of their positions they must consider whether the personal thoughts they choose to publish may be misunderstood as expressing Wynn's positions.
3. Using social media to threaten physical violence against any of Wynn's customers, employees, business partners, service providers and vendors.
4. Using social media to harass or discriminate against any individual, including but not limited to Wynn's customers, employees, business partners, service providers and vendors, based on the individual's color, race, national origin, religious beliefs or practices, gender, actual or perceived sexual orientation, age, disability, history of disability or perceived disability, gender identity/expression, genetic information, marital/partnership status, parental status, veteran status or military service.
5. Using social media to post intellectual property, trademarks, logos, or copyrighted materials owned by Wynn or any business partners, service providers or vendors.
6. Posting Wynn's trade secrets, proprietary or other confidential business information, including but not limited to private information about Wynn's customers, service providers and suppliers, company financial information, non-public operational procedures and techniques that have a commercial value and strategic business plans.
7. Posting advertisements for the purchase of Wynn's products or services.
8. Expressing an opinion about Wynn's products or services without disclosing that you are an employee.
9. Linking a social media forum to any "Wynn" internal or external web site, broadcast domain or computer network.
10. Using photographs, recordings, marketing materials, or other materials owned by Wynn for personal social media activities. Please note that Wynn's Code of Personal Conduct policy restricts the use of recording devices and cameras/camera-phone attachments; thus, any content gathered in violation of these rules may not be used in personal social media activity.
11. Using social media to engage in libelous, defamatory, obscene, violent, maliciously false or otherwise egregious behavior directed at or implicating Wynn, its customers, employees, business partners, service providers and vendors; activity that evidences a reckless/gross disregard for Wynn's business interests or serious disparagement of



## SOCIAL MEDIA

Wynn's products and services.

These limitations are not intended to infringe upon any rights employees may have under local, state and federal employment and labor laws.

### POLICY VIOLATIONS

Employees who violate this policy are subject to disciplinary action up to and including termination. In addition, Wynn reserves the right to take any appropriate legal action necessary to stop or remedy improper or unlawful conduct involving social media.

### RESPONSIBILITIES

Department managers are responsible for communicating, adhering and enforcing this policy.

The Information Technology department and the Corporate Investigations department are responsible for notifying the Employee Relations department and providing details of infractions regarding inappropriate social media use.

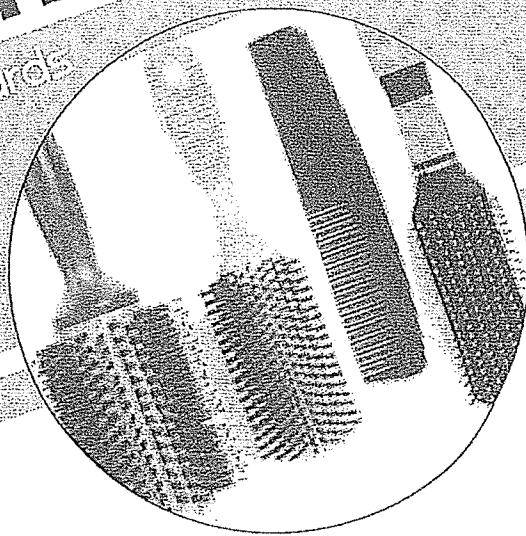
The Employee Relations department determines the severity of the infraction, notifies the employee's department manager, and meets with the employee to conduct an investigation. If warranted, the Employee Relations department will then recommend appropriate disciplinary action.

## **EXHIBIT 4**

## **EXHIBIT 4**

# it's all in the presentation

personal appearance standards



When you're out on the floor, the spotlight's on you! Make sure you look your best by following these presentation guidelines.

## on the subject of hair

### Hair

Must be neat, clean, and appropriately styled at all times

Extreme styles and/or colors are not permitted

Hair must not cover or fall into your face while performing job duties

Wigs are permitted, provided they meet the Personal Presentation Standards

Hair accessories and styles must be appropriate for a business environment and must conform to your specific department requirements

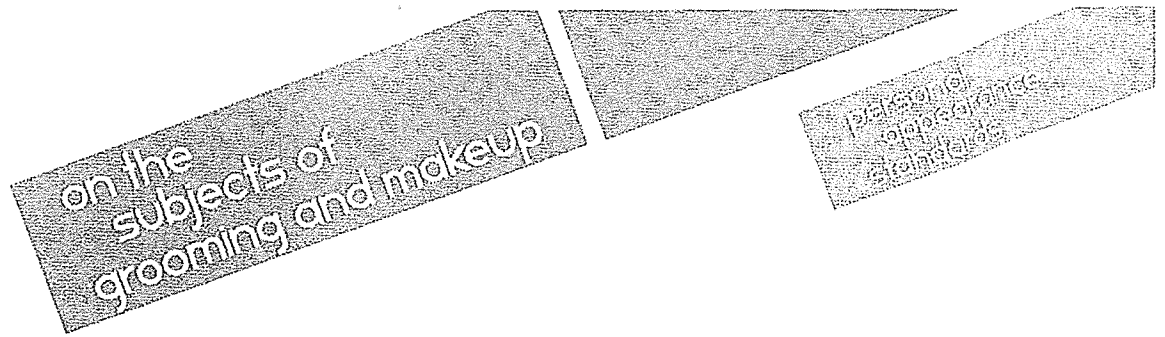
Men's hair may not be worn in a style that falls below the ears or over the collar

Partially shaved heads or shaved designs are not permitted

Beards and goatees must be well-groomed, closely cropped near the face, and may only be grown while you are off work (e.g. on your vacation)

Mustaches must not extend past the upper lip and may only be grown while you are off work (e.g. on your vacation)

Sideburns may not extend below the middle of the earlobe and must be neatly trimmed



### **Fingernails**

Must be clean, neatly manicured, and moderate in length

Extreme colors of nail polish are not permitted

### **Fragrances**

Perfumes, colognes, and aftershave scents should be subtle and worn in moderation

### **Makeup**

Must not be extreme

Men are not permitted to wear makeup while on duty unless they are working in a position that requires makeup (e.g. theater performers)

### **Body Piercings & Tattoos**

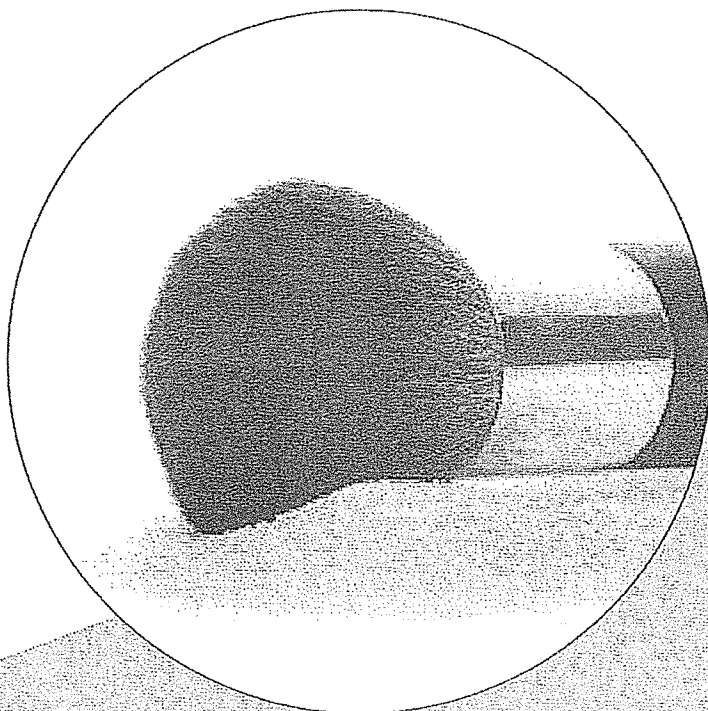
Visible body piercings, with the exception of ears, are not permitted (gauge piercing is never permitted)

In general, visible tattoos, either permanent or temporary, are not permitted and must be covered by a patch or bandage that suits the skin tone

### **General Grooming**

Daily use of toothpaste, mouthwash, and deodorant is required

Use of mints after meals and/or smoking is recommended



personal  
appearance  
standards

## on the subject of dress

### non-uniformed

Non-uniformed employees must dress in good, business-appropriate taste

Clothing should be appropriate to your job and work environment

Clothing should be neat, clean, well-pressed, well-maintained, and fit properly

Tank tops, bare midriffs, see-through fabrics, halter tops, and halter dresses are not permitted

Appropriate undergarments, socks, and/or hosiery must be worn at all times

Hosiery must be free from runs and tears, must be clean, and may not show discoloration or stains on the feet

Clothing must also conform to the specific standards of each department

### uniformed

Uniformed employees must wear their assigned uniforms

Uniforms must be neat, clean, well-pressed, well-maintained, and worn as designed

Long sleeves may not be pushed up or rolled up unless it is designed to be worn in that manner

Uniforms should always fit properly – ill-fitting uniforms, or uniforms that are worn out or that have tears, missing buttons, or are in need of other repairs must be brought to the immediate attention of the Uniform Operations Department

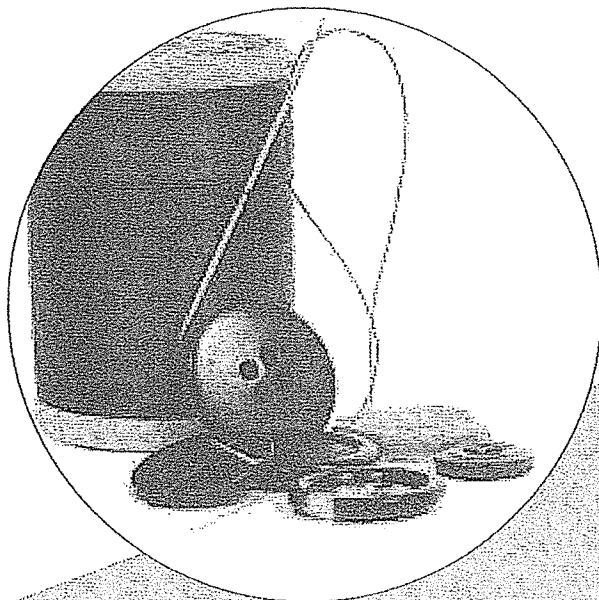
Alterations are to be done through the Uniform Operations Department only

Uniforms may not be worn off duty or when a guest of the property

Appropriate undergarments, socks, and/or hosiery must be worn at all times

Hosiery must be free from runs and tears, must be clean, and may not show discoloration or stains on the feet

Only company distributed buttons and/or badges may be worn while on duty



Your department may  
have additional personal  
presentation standards.  
Be sure to check with  
your Supervisor.

Jewelry must be tasteful and not excessive – limited to one ring on each hand, including a wedding ring

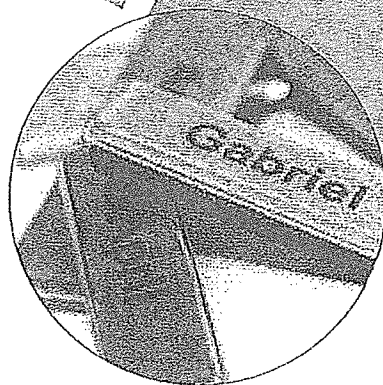
Pierced ears are permitted; women may wear no more than two earrings in each lobe; men who choose to wear earrings must wear one in each ear

Earrings must be appropriate in size and conform to the specific requirements of each department

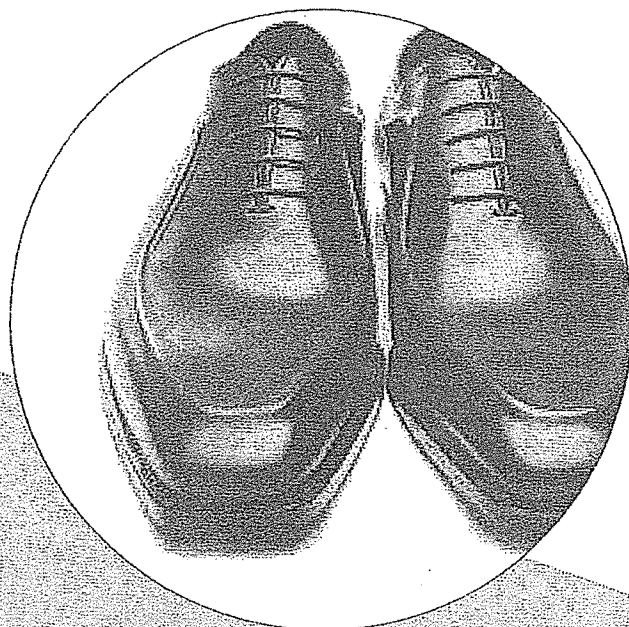
Hats are not permitted, unless part of your uniform

Dark glasses may not be worn indoors while on duty

Name badges must be worn appropriately at all times; no decorations are allowed on name badges except when authorized



personal appearance standards  
on the subject of accessories



Must be clean and well-polished, in good repair, and present a professional appearance

Shoes with open-toes or open-backs, including sandals, flip-flops, and sling backs, are not permitted

If you choose to wear walking shoes in from the parking areas, you must change into acceptable shoes before accessing guest areas

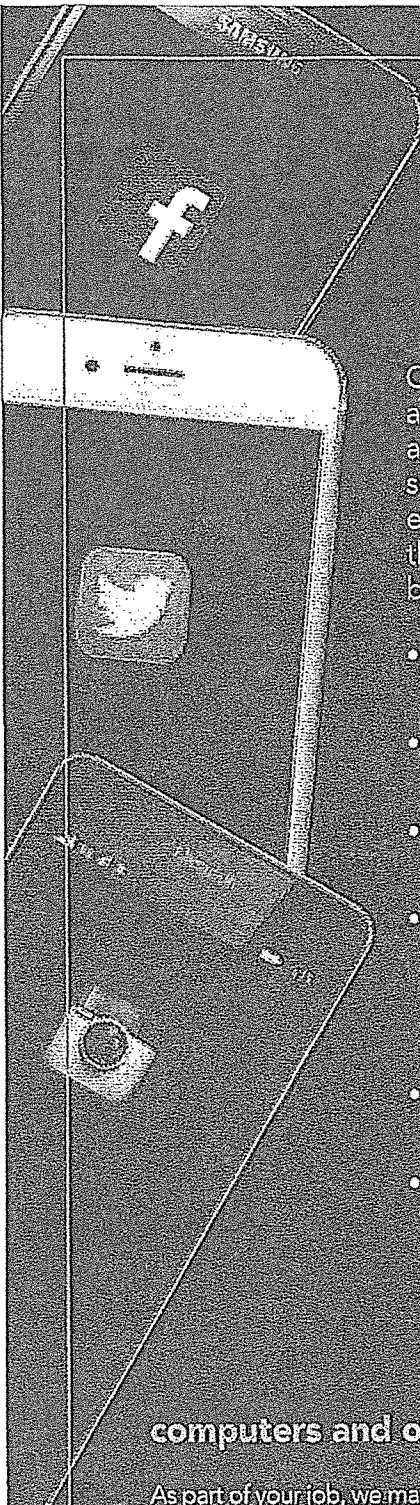
Shoes must also conform to the specific standards of each department, including safety requirements

on the subject of shoes

# **EXHIBIT 5**

# **EXHIBIT 5**





# social media

Odds are that you take part in social media in one way or another, whether it's having a Facebook account or uploading a YouTube video. You have every right to use these sites and services as you personally choose, but as a Wynn | Encore employee, you are prohibited from posting or sending media that may negatively reflect on the Company or jeopardize its business interests. This includes, but is not limited to:

- Posting information that purports to represent the position, viewpoint, statements, opinions, or conclusions of the Company.
- Using social media to threaten physical violence against or harass our customers, employees, business partners, service partners, or vendors.
- Posting Company intellectual property, trademarked logos, or other copyrighted materials.
- Posting Company trade secrets, confidential proprietary or business information, including, but not limited to private information about our customers, service providers and suppliers, Company financial information, non-public operational procedures and techniques that have a commercial value, and strategic business plans.
- Using photographs, recordings, or other materials owned by our Company for personal social media activities.
- Engaging in libelous, defamatory, obscene, violent, or maliciously false communications against our Company, guests, employees, or business partners.

## computers and other electronic devices

As part of your job, we may provide a computer system, email, limited internet access, and/or devices, such as cellular phones, to assist you in performing your job duties. You are expected to use these tools in a responsible and productive manner and are accountable for the content of all the text, audio, or visual images accessed and/or transmitted via these systems. Violations may result in disciplinary action up to and including termination.

All electronic communications through Company systems and devices is monitored. Wynn | Encore reserves and intends to exercise the right to access, review, and restrict any files, messages, or communications sent, received, or stored on its computer system. You must immediately report any improper use of the Company's email system to the IT department.